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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Attn: Docket No. R-1366
By email: regs.comments@federalreserve.gov

Re: Docket No. R-1366; Proposed Revisions to Regulation Z – Closed End

Dear Ms. Johnson,

JPMorgan Chase Bank, N.A. ("Chase") appreciates the opportunity to comment upon the proposal (the "Proposal") of the Board of Governors of the Federal Reserve System (the "Board") with respect to proposed revisions to Regulation Z which implements the Truth in Lending Act ("TILA"), appearing at 74 Federal Register 43232 (August 26, 2009).

I. GENERAL OBSERVATIONS

Chase strongly supports the Board's objective to provide meaningful disclosure of credit terms to enable consumers to compare different products and to avoid the misuse of credit. We applaud the Board's thorough and diligent efforts in working with consumers in an attempt to create disclosures that are both clear and understandable and can effectively assist consumers at the application stage and throughout the life of the loan. We believe the Board's Proposals take major steps toward significant improvement of the mortgage process.

Chase also supports the Board's stated intention to work with the Department of Housing and Urban Development ("HUD") to ensure that TILA and the Real Estate Settlement Procedures Act ("RESPA") disclosures are compatible and complementary. We share the Board's desire to eliminate any overlap between TILA and RESPA documents, particularly any overlap between HUD's new Good Faith Estimate ("GFE") and HUD-1 Settlement Statement ("HUD-1") and those documents being introduced by the Board in the Proposal. We strongly urge the Board to join forces with HUD to create combined, consistent disclosures, and to defer

adoption of final regulations with respect to overlapping disclosures until consistency can be achieved.

Finally, Chase shares the Board's goal of creating forms that consumers are more likely to understand and use without creating an undue burden on creditors leading to increased expense and lost efficiency. Creditors and consumers benefit greatly from streamlined disclosure processes.

Our comments in this letter with respect to the proposed forms will focus on several concerns:

- The need to make sure that the information the Board seeks to convey to consumers is conveyed clearly and accurately, and at a time and in a manner that it will do the most good;
- The need to minimize inaccuracy and inconsistency so that we do not create consumer confusion while striving for clarity;
- The need to eliminate the overlap between TILA and RESPA disclosures to reduce information overload and promote consistency; and
- The need to create clear and concise disclosures for consumers without imposing burdensome and costly programming obligations on creditors.

Chase will also comment on the Board's efforts to address other aspects of the mortgage and disclosure process, including but not limited to: the amended definition of "finance charge" and its impact on APR; loan originator compensation and steering; creditor placed insurance; optional insurance; and foreign language disclosures. While we support the Board's efforts to address these issues, we are concerned that some of the Board's proposals will have unintended consequences that could adversely affect consumers and creditors alike.

We also note that the extent and complexity of the Board's proposed disclosure requirements and the way in which they are presented make it difficult for affected parties to read and interpret them. Format, content and timing requirements for disclosures related to closed end loans secured by real property or a dwelling are spread throughout multiple sections of Regulation Z, with multiple cross references to other sections, making them hard to follow. Consequently, they are harder to comply with than need be. Chase suggests that the Board restructure Subpart C of Regulation Z so that all provisions related to closed end loans secured by real property or a dwelling are in one place. This will enhance creditors' ability to interpret the new regulations and will facilitate compliance.

II. PROPOSED NEW DISCLOSURES

A. Disclosures at Application

The Board has proposed two new one-page disclosures to be provided to consumers at the time of application, namely, "Key Questions to Ask About Your Mortgage" and "Fixed vs. Adjustable Rate Mortgages". Providing the CHARM booklet would no longer be required.

1. Key Questions and Fixed vs. Adjustable

The proposed disclosures present critical information in a clear and succinct manner that consumers will find useful. While there are numerous topics that could be addressed to educate consumers about mortgage loans, the Board has generally chosen appropriate issues.

We do, however, offer several suggestions that we believe would enhance the "Key Questions" disclosure.

- Question 1 states that the ARM interest rate may go up or down after a short period. This is not true with certain products such as 5/1, 7/1 and 10/1 ARMs. We suggest deleting "after a short period" and adding a new sentence: "On some ARM products your rate and payment may change after a short period."
- The reference in Question 2 to taxes and insurance causing loan payments to increase should be revised. Since tax and insurance increases occur regardless of the loan program the consumer selects, we believe referring to them in this context can distract consumers from their primary focus which is selecting a suitable loan. Alternatively, the Board could add a separate sentence: "Even if your principal and interest payments do not change, your total monthly payment could increase if property taxes or insurance premiums increase."
- It would be advisable to add a question on how interest rates are determined, the risk-based pricing factors that are taken into account, and the importance of knowing one's FICO score and reviewing one's credit report.

The "Fixed vs. Adjustable" disclosure points out the risks of ARMs. We offer the following suggestions.

- Like the "Key Questions" document, the "Fixed vs. Adjustable" document states that for an ARM, "both the rate and payment can increase very quickly." This is not true of certain ARM products that offer an initial fixed rate followed by an adjustable rate and the consumer should be aware that options exist. The sentence could be revised to say: "For some ARM products, both the rate and payment can increase quickly."
- Consider pointing out to the consumer the need to consider rate environment when selecting a loan product. When interest rates are low, ARMs could be considered riskier than fixed rate loans in many cases. In a higher rate environment where there is a

potential that rates will drop, the fixed rate consumer may be locked into a costly loan unable to take advantage of falling rates without refinancing. Pointing out the impact of the rate environment will provide a more balanced disclosure of greater use to consumers in a variety of financial environments.

The Proposal provides that the new publications are to be provided "at the time the application form is provided to the consumer or before the consumer pays a non-refundable fee, including a fee for obtaining the consumer's credit history, whichever is earlier". It is certainly feasible to furnish the new publications to consumers along with a paper application form, or electronically with an emailed application or one posted on a website. In the case of applications by telephone or submitted through an intermediary, the publications can be provided within three days after application. It is quite common today, however, for consumers to apply for a mortgage by providing information to a loan officer who inputs it directly into a computer. In some cases, no physical form of application is provided until a printed copy is sent with the three day documents. Chase believes the Board should make clear that under those circumstances, providing the publications with the three day document package, but before fees are collected, is compliant.

Chase also encourages the Board to change its reference to "credit history" in the provision on timing of fee collection to "credit report" to be consistent with RESPA.

2. ARM Program Disclosures

Chase also supports the new form of Adjustable Rate Loan Program disclosure proposed by the Board. We believe that it is a simpler, more consumer-friendly document than those currently in use and provides the consumer the basic information needed to understand key loan features. We do, however, believe a few minor changes would be helpful:

- The description of the Introductory Period would currently require creditors to state whether the initial interest rate is discounted, i.e., below the current index plus margin. In today's environment, discounted and teaser rates are not common. Initial interest rates are set based on the secondary market and are typically higher than the index plus margin. Accordingly, it is common today for the APR on an adjustable rate loan to be lower than the initial interest rate. Moreover, the creditor may not know at the time the ARM program disclosure is provided how the interest rate ultimately received by the consumer will relate to the index plus margin. This could result in the need for three disclosures for each product – one for a discounted rate, one for index plus margin, and one for a premium rate. We suggest the consumer would be better educated by rewriting this portion of the form to simply state that "The interest rate will stay the same for [length of time]." A statement could be added either in the Introductory Period box or in the Index/Formula box to the effect that: "During the initial period the interest rate may be based on the index [shown below] plus a margin or could be a higher or lower amount. Ask if your initial interest rate will be higher or lower than the index plus a margin." That would put the consumer on notice, while not requiring the creditor to create a form that is

customized to the particular transaction. This will allow greater flexibility in the event the consumer elects to pay points to buy down the interest rate to one that might be equivalent to a discounted rate, or to allow for changes in pricing conventions as markets change. Alternatively, the Board could add a Key Question explaining the risks related to discounted rates.

- Flexibility is also needed in disclosing the length of the introductory period. For example, on a one year FHA ARM the first interest rate change must occur within 12 to 18 months, so the length of the introductory period could vary. Creditors should have the ability to reflect a range of months to avoid the need to create a transaction-specific document.
- Creditors should have the ability to include more than one adjustment cap if applicable for the loan program. For example, ARMs such as a 7/1 or 10/1 ARM will often have a larger rate change limit for the first rate change, often 5%, and a smaller cap, usually 2%, for annual changes thereafter.
- The second, third and fourth Key Questions should delete the reference to "monthly" to allow for other payment periods. The Board should also clarify that the payments referred to are principal and interest ("P&I") payments only and do not take taxes and insurance ("T&I") into account.

The Board has requested comment on whether similar disclosures should be required for products other than adjustable rate mortgages. Chase believes that disclosures could be useful to consumers for non-traditional mortgage products that are not adjustable rate but may involve significant payment changes, such as fixed rate interest only mortgages, provided such disclosures are not transaction specific and follow the general format of the ARM program disclosures.

The Board has also requested comment on whether additional topics should be covered in the Key Questions About Risk section. Chase believes that creditors should have flexibility in choosing which risk factors to highlight and in creating new risk factors as new products evolve. We also believe that creditors should have leeway in including "Additional Disclosures" under Section 226.19(b)(ii). While we appreciate the Board's desire not to over load consumers with information that is not applicable to their loans, we believe there may be instances where consumers would be reassured to know that a certain risk factor is not applicable.

B. Disclosures within Three Days after Application

Chase appreciates the extraordinary efforts undertaken by the Board in revamping entirely its forms of initial and final Truth in Lending ("TIL") disclosures. We welcome the opportunity to comment on the forms as well as the timing of the Board's disclosure and re-disclosure requirements. We hope that the Board will use these comments to further improve the disclosures and to work with HUD to create uniform, consistent disclosures that can be used to satisfy the needs of both agencies without providing duplicate or inconsistent information to consumers that could result in confusion.

Loan Summary

Chase believes that the Loan Summary portion of the TIL is clear, well presented, and would be easily understood by consumers. However, it is substantially a duplicate of the GFE that the customer will receive at the same time. The Board should work with HUD to create a combined form that presents information to consumers once, in a consistent manner. Alternatively, HUD's forms should be restricted to settlement costs and the Board's to loan terms to eliminate overlap and inconsistency.

The Board should also clarify in proposed comment 226.28(k)(1)-1, as it did in its September 29, 2009 letter, that the "interest tail" on FHA and other loans where interest is charged for a full month regardless of payoff date does not constitute a prepayment penalty for purposes of the TIL and other disclosures required by Regulation Z.

Annual Percentage Rate

Chase has no objection to disclosing the Annual Percentage Rate ("APR") to the consumer on the TIL, as is done today. However, HUD's loan summary on the GFE discloses interest rate instead of APR and consumers may be confused by similar information being presented in a different manner on disclosures received at the same time. Consumers may not understand how to compare the two.

We have more significant concerns with other portions of the APR box. We are not clear what the Board's purpose is in providing rate comparison information at this stage of the mortgage process. While we fully support educating consumers and encouraging them to shop, we believe this should take place at a much earlier time.

The APR bar graph and related comparison disclosure that the Board proposes present challenges for creditors in terms of both content and format:

- The graph format would be difficult and expensive to program. Most loan origination systems available today simply are not set up to use graphics. Shading also presents particular programming difficulties and may cause disclosures to become illegible if copied or faxed. A table would be easier to implement.
- Comparing the consumer's rate to the Average Prime Offer Rate ("APOR") (referred to as Average Best APR in the model form) would require process and programming changes for creditors and the vendors with whom they work to do high cost testing. Currently, a creditor obtains the APOR at the time of rate lock to determine whether the loan is a higher priced loan. In order to complete the proposed initial TIL, APOR would need to be obtained within 3 days of application whether the rate is locked or not. In addition, Section 226.38(b)(2) indicates that the disclosed APOR should be for the week the disclosure is "provided" while Section 226.38(b)(3) requires the APOR for the date the disclosure is "produced". These are not necessarily the same and the Board should resolve the conflict by permitting use of either date. Comment

35(8)(2)-3 which states that APOR should be determined at the rate lock date needs to be reconciled.

- APOR is not available for FHA/VA loans or for jumbo loans. While the Board's form would strike a comparison with "similar but conforming" loans, we question how valuable that comparison would be to the consumer if FHA/VA, jumbo and conforming loans are priced differently. In order to facilitate comparison, the Board should make APORs available for a wider range of products.
- As currently defined, APOR is based on the interest rate and fee information in the Freddie Mac PMMS. Unless the APOR definition is revised to include all of the finance charges that are included in the APR, the APR provided to the consumer will always appear to be exceedingly high. We question the value of striking a comparison that is not "apples to apples".
- What is intended by the comparison to the APR available to "applicants with excellent credit"? Is the intent to compare a hypothetical applicant in the exact same circumstances but with a better FICO score? What is the ideal FICO score to use? In its Preamble, the Board suggests that the creditor should compare the consumer's APR to the APR of those with excellent credit as well as to those presenting a higher risk such as persons having bad credit or a higher loan to value ratio. Is the Board's intent to add points of comparison beyond FICO? Chase seeks clarification on all these points. We also note that information about the relationship between rate and credit attributes is already provided to consumers in the Notice to Home Loan Applicant required by Section 609(g) of the Fair Credit Reporting Act. In many cases, that notice would be provided at the same time as the initial TIL. It is not necessary or beneficial to provide the same information twice. We also suggest that the Board finalize the form of credit score disclosure that it proposed in connection with the FACT Act risk based pricing regulations. That would be a more suitable vehicle for educating consumers on this point.
- Consumers can reduce their monthly payments by lowering their interest rate, not their APR. While the Board instructs creditors to make the calculation based on interest rate, it still insists on use of APR terminology in the document provided to the consumer. We believe this is confusing to the consumer and can even be misleading. Use of inaccurate terminology can expose creditors to litigation risk for failure to disclose accurate information to consumers.
- Proposed Section 226.38(b)(4) requires disclosure with respect to "a 1 percentage point reduction in the APR" while the model form speaks of "a ___% reduction". Mathematically, the two are quite different. A one percentage point reduction in APR, such as from 8% to 7% is a 12.5% reduction in APR, not 1%. Such technical discrepancies expose creditors to significant risks of litigation as well as rescission claims and investor repurchase requests based on the technical inaccuracy. The Board should correct the model form to conform to the regulatory language. In addition, to eliminate the potential for confusion, the model form should show "1" instead of a blank to conform to the proposed regulation.

Chase proposes that a more useful approach to consumer education about the APR and the factors that affect it would be for the Board to create calculation tools and

present them to consumers on its website along with other appropriate educational materials. Consumers could use these tools to compare the rate a creditor offers them to the APOR or high cost threshold for a variety of loans on a given day at as many points during the loan process as they choose. Disclosure documents provided by the creditor could direct consumers to the Board's website. The advantage of this approach is that consumers nationwide would be receiving uniform information, accessible at will. Consumers can rely on the Board as an accurate and consumer friendly source of information. In addition, the cost and burden of the Board's creating one set of on-line calculators and educational materials available to all consumers is far less than the cost of thousands of creditors nationwide reprogramming their origination systems to do so.

Interest Rate and Payment Summary

Chase believes that this information, while useful, is largely duplicative of what is presented in the GFE and HUD-1. However, the HUD-1 on the one hand, and the TIL on the other, present the information in different ways. The TIL discloses P&I separately and groups mortgage insurance ("MI") with T&I; the GFE and HUD-1, by contrast, group MI with P&I and disclose T&I separately. In addition, the TIL calls for disclosure of the interest rate based on the terms of the legal obligation (note) even if a different rate is actually charged (e.g. because of an employee discount). By contrast, the GFE and HUD-1 disclose the actual rate to be paid at closing. This is confusing to consumers and the conflicts between the documents required by the Board and HUD should be resolved before the Proposal is finalized.

We also believe that T&I should only need to be disclosed by creditors who will maintain an escrow account. This is particularly an issue for home equity creditors who do not generally have escrow capability and, accordingly, do not maintain the necessary information on their systems. To avoid the risk that some creditors will omit taxes and insurance as a means of misleading consumers with respect to actual payment amount, creditors that do not escrow could add a statement similar to that required by the Board's HOEPA advertising rules: "Payments shown do not include amounts for taxes and insurance. Actual payments will be higher."

Finally, we question the advisability of including T&I in the Maximum at First Adjustment and the Maximum Ever columns. These amounts can change significantly over the life of the loan and the changes cannot be controlled or anticipated by the creditor. If the Board prefers to continue including T&I, the possibility of change should be disclosed to the consumer in a more clear manner than just using the "Est." designation.

More Information About Your Payments

Chase requests clarification of how rate and payment changes should be disclosed in this section when they are not a feature of the loan product but are based on a special

relationship such as employee loan rates or rate discounts for checking account customers or those who pay through ACH.

With respect to the Total Payments disclosure, we believe this should include P&I only. T&I are unrelated to the loan terms and can fluctuate too much over time to make an accurate aggregate disclosure possible. Moreover, the consumer would pay taxes and insurance in a cash transaction and it would be misleading to imply that they are a cost of the loan transaction by including them here. Sufficient information is provided in the Escrow disclosure in the same section.

Settlement costs are paid in one of two ways – either cash at closing or by being financed as part of the loan amount. In either case, the consumer has this information on the GFE and HUD-1 and does not need to receive it again, broken out in a different fashion.

We believe the last sentence in this section "This amount, and the amount financed of $_____, are used to calculate your APR" is a non sequitur that provides little, if any, useful information to consumers. It should be eliminated.

Additional Disclosures

Chase requests clarification on providing the loan originator's SAFE identifier as required by proposed Section 226.38(g). In most cases, a consumer will conduct the bulk of their transaction with a single loan officer, whether in person or by telephone. They will also have contact with a processor who obtains necessary documents from the consumer and provides updates throughout the transaction. From time to time, a loan officer may be unavailable and a colleague may fill in. We believe that disclosure of the unique identifier should be limited to the loan originator who took the consumer's application, found them an appropriate loan product, and got them started with the transaction. Since the loan officer is the focal point for the consumer, we propose that only his or her ID need be disclosed and that tracking and disclosing other contacts provides little incremental benefit.

The Board has requested comment on disclosure of a unique identifier in a completely automated transaction. Chase does not originate loans through a completely automated process; there is always human contact involved. We believe that this is true of most creditors, even those who may be more technically advanced than others. However, we believe that no matter how automated a transaction, there should be a person who is responsible for it, and that person should be identified to consumers.

The Board also requested comment on whether creditors should provide other contact information such as address or phone. While we would not necessarily object to including this information in the TIL, we do not believe there is much to be gained by doing so. Creditors want their customers to contact them and to send them the requested

documentation. Contact information is already provided to consumers at multiple times during the loan origination process.

Additional Separate Disclosures

The Board's Preamble notes that rebate, late payment, property insurance, contract reference and assumption disclosures that would be required by proposed Section 226.38(j) were not of primary importance to consumers and were not always well understood. These disclosures could contribute to information overload even if provided in a separate form and should be considered for deletion.

C. Disclosures Three Days Before Consummation

The Board's Proposal requires the final TIL to be provided to the consumer at least three business days before consummation. The Board's Proposal is contrary to the Mortgage Disclosure Improvement Act ("MDIA") which was so recently implemented. MDIA requires redisclosure three days before consummation only if the APR initially disclosed is inaccurate for any reason (including program change). If a term other than APR is incorrectly disclosed or changes, a revised disclosure must be received by the consumer at or before consummation. The Board should follow the standard set by Congress in MDIA. Requiring a final TIL three days in advance in all cases, whether or not key terms have changed, poses significant operational issues and will result in delays that could be annoying and harmful to consumers. In addition, since there is a guaranteed GFE, the need for consumer protection against last minute changes is greatly reduced.

Chase is concerned about the ability of creditors to provide a final TIL accurately three days before consummation when critical information is needed from the HUD-1 which is only available one business day before consummation.

On a closely related topic, the Board has requested comment on whether creditors would continue to provide RESPA documents in lieu of the itemization of amount financed if it must be provided three days before closing. As noted above, the HUD-1 is really the only reliable source of the necessary information. The need to provide the information to consumers three days before closing for TILA purposes when it only becomes available one day before closing under RESPA is problematic. The effect will be to force creditors to delay closings resulting in consumer dissatisfaction, at best, and a potential domino effect of failed closings in a purchase context where the ability to close one transaction is often dependent on the closing of another.

Alternatively, it would be necessary to have the settlement agent provide total settlement charges and information needed to determine the finance charge at least eight business days before closing in order to meet the Board's timing requirements.

We believe a better approach would be for the Board to permit the use of estimates on the final TIL within the tolerances permitted by RESPA and Regulation X.

Once again, we urge the Board to defer implementation of the proposed new TIL until it has had an opportunity to consider industry comments and to work with HUD to create a single form that will avoid duplication and eliminate the inconsistencies that are being identified.

The Board has also requested comment on two alternative approaches in the event a subsequent event makes the TIL inaccurate during the three day waiting period. The first alternative would require re-disclosure and another three day wait. The second would require re-disclosure, but impose the three day waiting period only if the APR changed beyond tolerance or the consumer switched from a fixed rate product to an ARM. Chase prefers the second alternative, which is more consistent with MDIA. We continue to have concerns, however, about successive delays and their effect on consumers, especially in purchase transactions. In order to make sure that a "cooling off" period -- or just more time to think -- is available for consumers who need it, but is not a hindrance for those who don't, we urge the Board to provide more guidance about the circumstances under which the waiting period can be waived. The only example provided by the Board is for refinances where the proceeds are needed to prevent a foreclosure. We suggest that a number of other examples should be provided. For example:

- A delay will cause the consumer to exceed a "time is of the essence" closing date in a purchase transaction, or would render the seller in the same transaction unable to close on the purchase of the new home they are buying, because the proceeds from the consumer's transaction are required.
- The consumer's interest rate lock is about to expire and the new rate would be higher.
- The consumer's credit documents are about to expire and delay would require the loan to be re-underwritten.
- The consumer lives in a cold climate and the proceeds of the loan are needed to repair a broken heating system.

These are only a few examples of the types of waiver requests we have seen in the rescission context. We expect the number of issues arising will increase because of the added built in delays. We believe consumers should have the ability to waive waiting periods when there is an urgent need to close and that creditors should be able to rely on the consumer's assertion that a bona fide financial emergency exists. Further guidance from the Board, especially in the purchase context, would be welcome.

The Board has also requested comment on tolerances. Chase supports the suggested increase in the finance charge tolerance from $100 to a higher amount. We do not believe that the suggested amount of $200 is sufficient given the extensive number of fees beyond the creditor's control that would be included under the Proposal. The Board should go a step further and make its tolerances consistent with those under RESPA for charges that can increase up to 10% at settlement and those which are not subject to a tolerance. Since many of the charges in these categories would be considered finance charges under the Board's new definition (discussed below), but are not finance charges currently, we believe an enhanced tolerance consistent with RESPA is warranted. Current Comment 22 (a)(4) provides an example in which a creditor fails to disclose a finance charge of $75 resulting in the APR being inaccurate by more than 1/8%. Since the finance charge is off by less than the $100 tolerance, however, it is

considered accurate and the APR based on the wrong-within-tolerance finance charge is deemed accurate as well. Chase believes a similar approach should be applied to the accuracy tolerances under RESPA. To the extent that finance charges subject to the 10% RESPA tolerance, for example, are under disclosed by less than 10%, they should be considered accurate. If the APR is under disclosed based on the wrong-within-tolerance finance charge, it should be considered accurate as well.

Chase also believes that there should be exceptions for cases where the consumer selects the settlement service provider and the charge exceeds the 10% tolerance. The excess cost should not be considered a finance charge because it is incurred at the option of the consumer and could have been avoided by selecting a provider suggested by the creditor.

Chase further believes than an overstated APR should be considered accurate and that reduction of the APR should not require re-disclosure. The concept of APR was adopted as a means of making consumers aware of the total costs of a credit transaction. It was intended to prevent creditors from hiding or disguising certain costs and fees, resulting in consumers being surprised by actual costs much higher than expected. An overstated APR continues to serve that purpose.

We also do not believe that the over disclosure route would be abused. To the extent that consumers use the APR to compare loans offered by different creditors, there is an incentive not to provide an over-inflated APR. Creditors who did so would be at a competitive disadvantage and risk losing customers to others whose disclosures were more realistic. We believe many creditors will err on the side of over disclosure to create a margin as a protective measure, but believe that competitive pressures will prevent abuse.

D. Disclosures during the Life of the Loan

1. Assumptions

Chase recommends that new disclosures concerning loans assumed by "subsequent consumers" be limited to those cases in which a consumer who is not obligated on the existing loan or is not already an owner of the property acquires title to the property or becomes obligated on the loan. For example, in some divorce situations where both spouses were obligors on the note, one spouse alone obtains title to the property and the other spouse is released from liability under the note via assumption. New disclosures should not be required in this context.

2. Rate and Payment Adjustment Notices

The Board is soliciting comments on proposed rule changes for the timing and content of the two notices required to be provided in connection with rate and payment adjustments on ARM loans. The Board is also soliciting comments regarding a proposed new mandatory disclosure regarding payment options for negative amortization loans.

While Chase supports the Board's general objective of improving disclosures to assist consumers in understanding how their ARM loans work, Chase has specific comments on how these objectives would be accomplished through these proposed rule changes.

ARM Change Notices

The current rule for ARM transactions requires a notice of a payment change to be mailed or delivered to the consumer at least 25, but no more than 120, days before the payment at the new rate is due. The Proposal increases the minimum advance notice period to 60 days. This extension is intended to give the consumer more time to take any necessary measures to respond to the new payment, such as exploring refinancing options if their payment is increasing to an amount they cannot afford or do not want to pay.

Chase strongly supports early notification to consumers of interest rate and payment changes on their ARM loans, particularly in cases where the change may be significant and there is a risk of payment shock. Our practice is to reach out to our customers long before a change occurs to encourage them to contact us about the possibility of refinancing to a lower rate or discussing a modification. While we agree with the intent of the Board's Proposal, we wish to point out some respects in which it poses logistical challenges.

The Board's Proposal acknowledges that some ARM loan documents require the creditor to determine the interest rate needed to calculate the new payment amount using an index value that will not be available until 60 days or less before the payment change date. The Board requests specific comment on the number or proportion of existing ARM loan agreements under which creditors or servicers could not comply with a minimum 60-day advance notice requirement.

Chase has identified a substantial number of loans in its first lien ARM loan servicing portfolio (well over 40%) for which the proposed 60-day minimum notice period would make it impossible for Chase to correctly compute the new payment amount. The Board's Proposal also requests comment on whether requiring creditors to provide 45, rather than 60, days' advance notice of payment changes would better balance the interests of giving consumers more notice with giving creditors sufficient time to verify the index and prepare disclosures. Reducing the notice period to 45 days would not make a significant difference in the number of loans in Chase's ARM loan portfolio for which this would be an issue.

As an alternative to the 60-day or 45-day minimum notice proposal for loans originated before the effective date of the new rule, Chase requests the Board to provide some flexibility in cases where the loan documents dictate a shorter period in which to identify the index for an upcoming rate and payment change. Chase suggests requiring advance notice at least 60 days before the payment change date, unless the index value identified in the loan contract is not available at least 15 days before this 60-day minimum, in which case the notice should be mailed or delivered within 15 days after the index value becomes available. For new loans originated after the effective date of the rule, the loan programs and related documents could be revised to

accommodate the 60-day advance notice requirement, provided that servicers are given sufficient time to make the changes to documents and systems before the effective date of the rule.

In addition to timing changes, the Board is proposing to add more information to the content of the ARM change notice. Chase would like to highlight certain specific revisions in its comments.

The Board proposes to require creditors to show how payments are allocated among principal, interest and escrow accounts for interest only and negative amortization loans. The Board's Proposal states that it believes a table showing payment allocations would be beneficial to consumers. Chase is concerned that providing this information in the ARM change notice could result in confusion and misunderstanding by consumers because the allocations can change as often as monthly. Disclosing them in the notice may create the expectation that they will remain fixed until further changes are disclosed. For interest only loans, it should be evident that only interest is being paid. On most other loans, the allocation between principal and interest changes monthly. As the loans amortize, more of each payment is allocated to principal and less to interest. With an Option ARM product, the allocation of payments between principal and interest could change each month because of changes to the interest rate and the unpaid principal balance each month. Consumers are currently provided with information about this allocation monthly, as part of their mortgage billing statement. The information in the statement is real-time and accurate. We believe consumers are better served by receiving this information in the manner in which it is currently provided rather than in the ARM change notice.

Not only can the allocation of principal and interest amounts change after the effective date of the new payment, but principal and interest also could change between the time the notice is prepared and the time the payment amount is due – especially if the new rule requires an extended notice period such as the 60-days minimum notice period currently proposed. The principal and interest payment calculations for the notice would be based on a projected unpaid principal balance as of the interest rate change date. The principal balance can change due to payments that have not yet been applied to the account, principal curtailments, delinquent payments, or other adjustments. The longer the advance notice requirement, the greater the chance allocated principal and interest amounts could change in the meantime.

In addition to principal and interest changes, tax and insurance escrow amounts can change annually as part of the annual escrow analysis required under RESPA regulations at 12 C.F.R. 3500.17. Changes in the escrow amounts based on the annual escrow analysis would not necessarily coincide with the issuance of the ARM change notice, which could create confusion for consumers who have an expectation regarding the amount of their payment as a result of the ARM change notice, but then are told something different in their annual escrow analysis. Moreover, the part of each payment allocated to taxes and insurance is shown in each monthly statement. We believe this is sufficient and that providing it in the context of an ARM change notice would create more confusion than it avoids.

Disclosures could be added to the ARM change notice to inform the consumer that the amounts shown are projected in advance as of a specified date, and that the amounts will change

due to a variety of factors, such as changes to the unpaid principal balance, unapplied payments, loan amortization, delinquent payments, and annual escrow analysis. However, Chase questions whether, even with the disclaimers, the information is very useful to a consumer since it is just a snapshot based on a future projection.

It is also unclear how the Board's model form should be used for Option ARM loans with the potential for negative amortization. The Board does not indicate which payment option should be used to provide the information required in the model form. Chase requests that the Board provide further guidance in this regard, as well as on the interaction of the ARM change notice H-4(G) and the proposed monthly Option ARM payment notice H-4(L).

Finally, Chase has concerns about including the amount of any possible prepayment penalty on the ARM change notice. There are a variety of circumstances under which prepayment penalties are imposed. Some are charged only in connection with a refinance but not if the property is sold; some may only apply if the refinance is with a different creditor; sometimes the penalty is applied only in the case of a full prepayment; in other cases, a partial prepayment will trigger a penalty. There are also a number of different ways of calculating prepayment penalties such as a percentage of the outstanding principal balance, a certain number of months interest on the amount prepaid, or an amount based on the difference between the note rate and the market rate. Any prepayment penalty amount shown in the ARM change notice would have to be based on certain assumptions and certain facts (e.g., unpaid principal balance) at a point in time at or prior to the preparation of the ARM change notice. The information presented would likely be inaccurate by the time the consumer receives the notice, and even more inaccurate by the time the consumer is able to arrange for refinancing. We believe that consumers would be better served by being instructed as to the existence of a prepayment penalty and being advised to contact the creditor for loan specific information. Alternatively, consumers should be advised that the amount shown is an approximation based on assumptions in effect as of a certain date and that the actual charge may be different.

Annual Interest Rate Notice

Chase has a small portfolio of loans in which the interest rate changes one or more times during a year, but payment changes occur after periods greater than one year. Rate change notices are provided at least annually as required by current Section 226.20(c) and often in connection with each interest rate change. The Board's proposed form of notice H-4(K) would require substantial programming, the cost of which would be disproportionately high given the small number of affected loans. In addition, these products are no longer offered, so the number of loans will continue to decline. Chase recommends that the Board's proposed form of notice be required prospectively only so that creditors that no longer offer the products are not required to undertake massive programming efforts for a small number of loans.

Negative Amortization Loans

The Board proposes to require creditors to provide a monthly disclosure showing payment options available to a consumer for loan products with negative amortization features.

The Board requires the content of the disclosure to be substantially similar to the sample model form H-4(L) provided with the proposed rules. While Chase supports the concept of providing clear choices to the consumer about their payment options, Chase is concerned that some of the information required to be disclosed does not accurately describe the way many loan products with payment options work. It is not clear from the proposal how much creditors could deviate from the language in the model form in order to more accurately describe the specific payment terms and features of a particular loan product.

The information in the disclosure for the Minimum Payment states that this payment amount covers, "Just part of the interest that you owe this month." This is frequently not correct for certain Option ARM products. Whether or not the minimum payment covers all accrued interest depends on how interest rates change after the minimum payment is set. In a declining interest rate environment, the minimum payment may cover more than a fully amortizing payment, resulting in over-amortization. In a rising interest rate environment, the minimum payment may pay down less principal each month and ultimately not be sufficient to pay all of the accrued interest in any month, resulting in the potential for negative amortization. The statement in the disclosure assumes that the minimum payment will never be sufficient to pay all interest that accrues in any month, which may not be the case. Thus, Chase recommends that the sentence be revised to reflect the fact that paying the minimum payment will not always result in paying just a portion of the interest that accrues in any given month.

In addition, the information in the disclosure for the Minimum Payment states that if the consumer makes this payment every month, "As early as (date), you will have to make payments significantly larger than today's 'Full Payment' amount to pay off your loan." This could be incorrect depending on interest rate changes in the future. Because one cannot predict how interest rates will move over a long period of time, there is a need for flexibility in describing the consequences of selecting a particular payment option in order to make accurate disclosures.

The Proposal would also require the Negative Amortization Monthly Disclosure to be sent to consumers each month at least 15 calendar days before their next payment due date. Servicers of closed end mortgage loans frequently use a billing method referred to as the "bill and receipt" method. If this billing method is used, a consumer's statement is sent following the receipt of the consumer's loan payment. The Proposal would require the disclosure to be sent to the consumer each month regardless of whether a payment is received. It is not clear whether the disclosure is meant to replace the servicer's normal billing statement or to change the method and timing by which the servicer sends billing statements to consumers, but use of the disclosure in addition to a servicer's normal billing statement could confuse consumers because the information contained on each form could be different.

It also appears that the Proposal requires the disclosure to be sent to the consumer each month regardless of the status of the loan. Servicers often cease sending a billing statement to consumers whose loans are delinquent. If a consumer misses a monthly payment, it is not clear how this disclosure should be completed. In the case of delinquency, the consumer may owe multiple payments, which does not appear to be addressed by the disclosure. Requiring the disclosure to be sent to consumers who are in foreclosure, for example, could be confusing

because the information required to be shown on the disclosure may not bear any relationship to the amount necessary to reinstate the loan and remove it from the foreclosure process.

Chase currently provides payment option information on its monthly statements in a manner generally consistent with the recommendations in the Interagency Guidance on Nontraditional Mortgage Product Risks issued in 2006 and the sample illustrations issued in 2007. Chase believes the Board should enable servicers to continue to provide notices consistent with the Interagency Guidance until such time as alternative disclosures that accurately describe the workings of Option ARM loans can be developed. Any new disclosures that are developed should be mandatory only for newly originated Option ARM loans. Most creditors have discontinued originating Option ARMs. Many have small portfolios or are actively working to transition consumers from Option ARMs to more traditional products. The cost of creating a new disclosure for a declining population of loans would be prohibitive, particularly when comparable information is already being provided.

III. OTHER ISSUES

A. Definition of Finance Charge

The Board is proposing to amend Section 226.4 to make most of the current exclusions from the finance charge inapplicable to closed-end mortgage transactions. The Board believes this will provide a more accurate APR to enable consumers to better compare costs among different creditors. The Board further believes the change will have little impact on the number of loans determined to be high-cost or higher-priced under HOEPA or high-cost under state law.

While Chase supports the goal of consumer protection through meaningful disclosures and in some instances approves of the proposed changes, Chase believes that most of the changes will not have the desired effect and could cause a significant number of loans to be considered high-cost. Since many creditors do not originate high cost loans, and such loans cannot be sold in the secondary market, the result will be a significant limitation on the availability of credit.

Most of the fees that would be included in the finance charge under the Board's proposal are fees that the creditor has no control over, that will not vary by creditor and will often not be known until very close to the closing date. This will cause disclosures to be inaccurate, requiring re-disclosure and attendant closing delays. Even worse, loans could be determined to be high-cost close to the closing date, resulting in last minute fee waivers or, in some cases, last minute cancellation of the commitment by a creditor whose policy is not to make high cost loans.

Impact on APR

The Board has considered the impact that the proposed changes will have on state and federal high-cost APR thresholds. However, there was no discussion of the impact to state and federal points and fees thresholds. As the Board noted, there is little variation among state APR thresholds. Only four states (Illinois, Maryland, New Mexico and the District of Columbia) have APR thresholds lower than the federal threshold. An analysis of our production figures indicates

that a loan's APR will increase by an average of up to 50 basis points with the inclusion of these fees.

Impact on State Points and Fees Thresholds

While Chase finds a 50 basis points increase in APR is significant, the even more significant impact will be on the state high-cost points and fees thresholds. These thresholds vary considerably among the states, from New Jersey's 4.5% threshold to those that mimic the federal threshold of 8%. Twenty-two states have points and fees thresholds lower than the federal threshold. Our research indicates that a loan's points and fees will be increased by an average of $2500 due to the inclusion of the new finance charges. Three states would have increases in the $4000 range. Assuming an average loan amount of $200,000 (based on the Board's statement that the typical amount of a purchase or refinance loan is $175,000 to $225,000), the average added fees in New Jersey ($3467) would alone amount to 38% of the $9,000 points and fees threshold. The average increase in fees in New York ($4538) would in itself constitute 45% of an average loan's threshold of $10,000.

Just as state points and fees formulas differ widely, the definition of what constitutes points and fees under state law also varies. All of the new finance charges will need to be included in the state's high-cost calculation in 12 states. There would be no change in eight states. Three states would include some fees and not others. The impact is unclear in five states, subjecting creditors to litigation risk unless they take the most conservative approach under the law.

The disparate definitions of finance charges among the states exemplifies the need for a federally mandated standard for high-cost loans. Almost every state law has its own nuances, in terms of thresholds, points and fees definitions and types of loans covered. A national uniform standard is needed. Establishing a national standard, particularly if accompanied by an adjustment of the Board's high cost threshold, would significantly lessen the negative impact of an "all in" finance charge.

Since many creditors' policy is not to originate high-cost loans, loan commitments often permit the creditor to withdraw approval if the loan is later determined to be high-cost. To minimize the chance of that happening, creditors run a high-cost test before a loan commitment is issued. Since the Board's proposal would require inclusion of so many fees that are variable and not controlled (or even known) by the creditor, the points and fees can be materially increased late in the process, causing loans to fail the high-cost test performed prior to closing. Creditors would then have no choice but to cancel the commitment, which would be detrimental to the consumer, especially in a purchase transaction.

Inclusion of inspection fees, survey fees, title insurance fees and notary fees

Chase views the proposed inclusion of inspection fees, survey fees, title insurance fees and notary fees in the finance charge to be highly problematic and of little value to consumers. The consumer often selects his or her own inspectors and surveyors. Title insurers and notaries

are often selected by the consumer's closing agent. These fees will not vary by creditor and therefore including them in the finance charge will not provide a meaningful basis on which to compare creditor costs. In addition, since these third party charges will not be known to the creditor until late in the lending process, an accurate high-cost test cannot be run at the initial commitment stage. As mentioned above, since some of these fees can be substantial, their inclusion could cause loans to be determined as high-cost only a few days before the closing. The accuracy of TIL disclosures would also be impacted causing delays, as discussed above.

The Board has made a cogent argument for maintaining the hazard and liability insurance premiums exclusion from the finance charge. As noted by the Board, while creditors generally require such insurance as a condition of extending credit, consumers who do not have mortgages regularly purchase this type of insurance to protect themselves. Chase believes that the inspection, survey, notary and title fees should also be excluded from the finance charge for the same reason. Consumers obtain surveys and perform inspections not because they are required by the creditor to do so, but in order to properly assess the value and condition of the property. Consumers also obtain title insurance to protect themselves against the risk of a defect in title, irrespective of a creditor's interest.

Congress has long recognized the difference between fees that are incurred in connection with the consumer's real estate transaction and those that are related to mortgage financing. We believe the Board should continue to recognize this meaningful and important distinction.

Inclusion of government taxes and recording fees

Chase does not support the Board's proposal to include government taxes or recording fees in the finance charge. These fees also do not vary by creditor and therefore their inclusion in the APR does not make the APR a more meaningful tool for comparison. Moreover, since government taxes and recording fees are disclosed in the GFE and HUD-1, the consumer has an alternate source of information.

As the Board noted, these fees vary geographically. The cost to record security instruments varies considerably among states and also by county or municipality. May jurisdictions have recently increased their recording fees and taxes as a revenue measure in a challenging economy. The most obvious impact would be in New York State. The New York state mortgage tax ranges from $0.75 per $100 of mortgage amount in some counties to $1.30 per $100 of mortgage amount in other counties. The inclusion of the mortgage recording tax for New York mortgages will therefore add from ¾ of a percentage point to 1.30% of the loan amount to the points and fees included in the calculation, where the threshold is only 5%. Properties in New York City are subject to an additional mortgage tax, making the combined tax approximately 2% of the loan amount for loans up to $500,000 and even more for loans that exceed $500,000.

We have also found that many jurisdictions have recently increased their recording fees and taxes as a revenue measure in a challenging economy.

Escrow accounts

Chase strongly opposes the Board's proposal to include amounts required to be paid into escrow accounts in the finance charge. While it is true that a consumer buying a house in a comparable cash transaction will not have to pay tax and insurance escrows at the closing, these are costs that would be incurred by the consumer later, when the insurance premium or tax bill is due. Therefore, the amount of the escrows are not a cost of the credit. At most, the cost of the credit is the loss of use of the money for a period of time. Therefore, the inclusion of these amounts will not promote the Board's goal of educating consumers on the true cost of credit. Another problem is that the amount of escrows required will change depending on when the closing occurs. Since a creditor should have enough in the escrow account to pay the taxes when due, the number of months to be escrowed will change whenever a loan closing is delayed and moved to the next month. Since the amount of the escrow varies by closing date, a creditor cannot provide an accurate estimate early in the transaction. The addition of the correct number (which can be quite high) shortly before the closing date could cause a loan to exceed the high-cost points and fees threshold late in the process. A review of our production numbers indicates that the average amount of tax escrowed is $3,700. However, 25% of our loans have tax escrows in excess of $5000.

The inclusion of the hazard insurance escrow will not have as great an impact as the tax escrow since generally only one month is collected at closing and the dollar amount is not as large. However, this is another charge that cannot be known to the creditor until very shortly before the closing and will vary based on the insurance company, the dollar amount insured and the specific insurance options purchased by the consumer. While the impact will not be large, we do not believe the inclusion of the hazard insurance escrow provides enough benefit to warrant the change. In addition, since the Board has preserved the existing exclusion of hazard insurance premiums from the finance charge, it seems illogical to include the hazard insurance escrow.

Application, appraisal and credit report fees

Chase supports the inclusion of application, appraisal and credit report fees in the finance charge. The Board states that a creditor currently can manipulate the APR by shifting some of the costs of credit to fees that are excluded from the finance charge. While Chase does not engage in such activity, we acknowledge that this may be a practice by some in the industry. Application fees can easily be used to hide other fees and therefore it is sensible to require this fee to be included in the finance charge. Chase already includes the application fee as a finance charge and would support making this practice uniform across the industry. Chase would also support the inclusion of appraisal fees and credit report fees in the finance charges. These services are required and ordered by the creditor and their costs are known by the creditor early in the loan process. Since the charges are relatively small, they should not have a significant impact on the high-cost points and fees calculations.

Closing agent charges

Chase also supports the proposed change requiring inclusion of all closing agent charges in the finance charge. A rule that all such charges should be uniformly included in the finance charge will simplify the closing process and create more certainty when dealing with investors. However, as the Board noted, a creditor may not know a particular charge was imposed by a third party until shortly before closing. As discussed above, this imposes significant risk to the creditor and should be accompanied by an increase in the finance charge tolerance.

Optional Insurance

The Board is also proposing to eliminate the current finance charge exclusion for voluntary credit insurance premiums and for voluntary debt cancellation and suspension fees incurred in connection with closed-end loans secured by real property or a dwelling. We believe that eliminating the current exclusion for voluntary products is unnecessary to achieve the Board's goals with respect to disclosure of transaction costs and is clearly inconsistent with the very nature of a voluntary product offer. The justification for forcing voluntary fees into a category designed for required fees is further weakened by the Board's related disclosure proposal --- proposed Section 226.38 (h), which would add dramatic new disclosure requirements aimed at ensuring that optional credit insurance and debt protection products are, indeed, purchased on a voluntary basis.

The current and proposed definitions of "finance charge" include the statement that the finance charge includes "...any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident or condition of the extension of credit." As the Board is well aware, the concept of whether a fee is being "imposed" by the creditor "as an incident or condition of" credit, coupled with certain consumer safeguards set forth in section 226.4 (d), form the basis of the finance charge exclusion that is currently in effect for these products. Chase believes that the current rule is correct, as voluntary credit insurance premiums and debt cancellation fees are neither "imposed by the creditor" nor are they a "condition of credit". Excluding voluntary fees from the finance charge upholds an important principle -- voluntary consumer choice based upon appropriate information. Treating voluntary and required fees in the same way by defining both as finance charges may have the unintended effect of increasing required products and fees at the expense of voluntary ones, thereby eliminating a key benefit to consumers afforded by the current rule.

Fees for these types of voluntary products should continue to be excludable from the finance charge under the same conditions as apply today – after clear disclosure of product costs and that the product is optional and after obtaining an affirmative written request from the consumer. Establishing that a service is "voluntary" is not a complicated factual determination, as suggested by the Board. Distorting the nature of a voluntary product fee and classifying it with required real estate closing and security interest charges is not the best way to ensure voluntary sales and will likely confuse consumers.

Including fees for optional products in the finance charge also will cause more loans to become either "high cost" or "higher priced" loans. Some consumers want to protect their home and credit rating against material adverse events, such as death, unemployment and disability. Classifying voluntary premiums and fees as a finance charge may have the unintended effect of diminishing the availability and convenience of products that consumers have demonstrated that they want and need.

While Chase does not believe that these premiums and fees are finance charges in any context, there is no sound basis to treat them as finance charges for closed end real estate-secured loans but not for open end real estate secured loans, unsecured loans or loans secured by other types of property.

Charges for creditor-required credit insurance or debt cancellation products should be a finance charge, as they are today (Sections 226.4 (b) (7) and (10)).

Seller Points

Chase supports the Board's determination to continue excluding points and fees paid by the seller. We recommend that the Board also exclude amounts paid by an employer to relocate an employee, as these costs are not borne by the consumer.

Existing Liens

We recommend that the cost of discharging or re-subordinating an existing lien or debt be excluded from the definition of finance charge. These fees would be the same regardless of which creditor the consumer selects and would not affect the consumer's ability to shop for the loan.

Other Concerns

Section 106 of TILA clearly states charges which Congress intended to be included in, or excluded from, the finance charge. While we support some of the changes the Board has proposed, Chase questions the legal authority of the Board to change by regulation that which Congress has clearly dictated by statute.

Section 105 of TILA directs the Board to "prescribe regulations to carry out the purposes of this title" and further states that "these regulations may contain such classifications, differentiations or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." While the Board's authority is broad, we believe that the extent of the proposed changes to Congress' "some fees in, some fees out" construct directly conflict with the plain language of the statute and render exercise of the Board's authority in the proposed manner to be highly questionable.

B. Optional Insurance and Debt Protection Disclosures and Eligibility Determinations

Chase supports disclosures that will further insure that optional product purchases are truly voluntary. However, we believe that two of the new disclosures proposed by the Board are so general that they are likely to mislead consumers. Specifically, with respect to proposed Section 226.38(h) (3) and (4), it is overly simplistic to state that the policy being offered "...may not provide you with any additional benefits if you have insurance already," and we are aware of no clear basis for the statement that other insurance is "often less expensive." For those consumers who are not knowledgeable with respect to insurance, such a statement may falsely lead them to conclude that their mortgage (their largest financial obligation in most cases) is already protected under some other form of insurance. For example, some credit insurance and debt protection products cover involuntary unemployment, an event which many consumers are not otherwise protected against. Similarly, if a consumer has other disability insurance, the benefits available under that policy may not be sufficient to cover the mortgage payment in addition to other living and medical expenses. We recommend that these disclosures be targeted at educating the consumer about the need to avoid duplicate and unnecessarily expensive coverage. For example: "If you have similar insurance protection, it is very important that you compare benefits in order to have the appropriate amount of coverage (not unnecessary or duplicate coverage) at the best possible price. You should consult with an advisor if you need help in making this decision."

In the case of voluntary purchases of credit insurance or debt protection products, the expanded disclosures afforded by proposed section 226.38 (h), including our comments as set forth above, will be effective in further sensitizing consumers to the cost of these products. There is no need to eliminate the line between required and voluntary purchases by subjecting both to the finance charge calculation. Charges for required credit insurance or debt cancellation products should continue to be a finance charge, as they are today pursuant to Section 226.4 (b) (7) and (10).

While Chase supports the general intent of the proposed requirements with respect to eligibility determinations, we request the Board to make certain changes to the proposal. Determining whether a consumer meets employment eligibility criteria is significantly more complicated than verifying age eligibility. For example, in order to keep costs manageable, products available in the market today often exclude certain types of employment, such as temporary or seasonal work, from eligibility for unemployment benefits. Similarly, some plans may have a minimum working hour requirement, e.g., 30 hours per week. This type of information is not necessarily required by creditors for credit underwriting purposes as long as the amount of income is adequate; even if it were required, there may be no ability to retain this information on many lending systems. We, therefore, request the Board to explicitly permit creditors to obtain a signed disclosure that conspicuously informs the consumer of the employment eligibility requirements, including an affirmation that the consumer meets the requirements at the time of enrollment.

In addition, it is not feasible for a creditor to determine "...at the time of enrollment" that the consumer meets any applicable age or employment eligibility criteria if the optional product is offered after loan origination. Today, these products are frequently offered through the mail and over the telephone. Whether offered by the creditor or someone else (e.g., an insurance company), the person making the offer often has no information regarding the consumer's age or employment status. Even if the person making the offer had access to the creditor's lending system (which typically they do not) and could make a determination about age, they still would have no means of "determining" the consumer's current employment status other than asking the consumer for such information. Chase does not believe that the proposed rule should operate to effectively preclude the offering of credit insurance and debt protection products after loan origination; rather, the Proposal, if adopted, should allow the creditor or insurance company to "screen" for eligibility through the use of a script, or to rely on the consumer's signed affirmation in the case of an offer by mail, in conjunction with other procedural safeguards. For example, the Board could require (1) that the script or direct mail piece include a clear and conspicuous disclosure of all age and employment eligibility requirements, (2) that the consumer be informed that he or she will have a product review period, such as 30 days, during which he or she can review the policy or debt protection agreement for eligibility requirements and obtain a full refund of any fees incurred if they conclude that the product does not meet their needs (often called a "free look" period in connection with insurance policies) , and (3) that the creditor provide the consumer with an annual reminder that he or she should determine their continuing eligibility for the product's features (such reminder to include a simple, highlighted disclosure of all material age and employment eligibility requirements).

Chase strongly supports the Board's proposal to not require creditors to "determine" a consumer's continuing eligibility under age and employment criteria post-enrollment. As a practical matter, creditors have no way to track employment status post-enrollment. Consumers will be sensitized to eligibility requirements via the Board's enhanced optional product disclosures and through other disclosure information already mandated by federal and state law, e.g., state insurance laws, debt cancellation product regulation and disclosure requirements (such as Part 37 of the regulations issued by the OCC). Chase requests that the Board's guidance limiting age and employment eligibility determinations to the time of enrollment be included in the Official Staff Commentary.

C. Creditor-placed Property Insurance

Chase generally supports the proposed new disclosure requirement as providing valuable consumer information, and believes that most creditors are providing this type of notice already. As there are already industry practices in place, we respectfully request that the Board allow such practices to continue if they are consistent with the Board's objectives. Our specific comments are provided below.

Section 226.20 (e) (2) (i) requires creditors to make a "reasonable determination" that the required insurance has lapsed. Chase believes this is problematic because it can be read as imposing a new and unnecessary standard with respect to the nature of the determination that a

creditor must make. Current industry practices vary greatly in terms of how creditors monitor their loan portfolios for various types of property insurance. For example, a creditor may respond to a notice of lapse or expiration in the case of a homeowner's insurance policy (a reactive process) but may affirmatively monitor its portfolio for flood insurance due to the regulatory guidance that applies to this form of insurance (a proactive process). We do not believe that the Board intends to mandate a particular process nor do we think that it should. Therefore, we suggest that this Section be revised to read: "The creditor has determined that the required property insurance has lapsed based upon reasonable information that the creditor has received or gathered."

Section 226.20 (e) (2) (iii) should be revised to facilitate notice periods of longer than 45 days (as is permitted with proposed Section 226.20 (e) (ii)). We suggest that this Section be revised to read: "During the 45-day notice period (or such longer period as the creditor permits not to exceed XX days), the consumer has not provided the creditor with evidence of adequate property insurance."

Section 226.20 (e) (3) (v) requires the notice to the consumer to specify the date the creditor can charge the consumer for the cost of coverage. There are significant variations in systems and capabilities among creditors and their vendors. As such, it may not be possible to insert a "hard date" in the required notice without significant programming time and expense. We, therefore, request that the Board allow a disclosure such as the following: "Under our agreement, we can buy property insurance on your behalf and charge you for the cost as early as 45 days from the date of this notice."

Proposed Section 226.20(e)(4) requires the creditor to mail or deliver the policy, certificate of insurance or other evidence of coverage to the consumer within fifteen days after charging the consumer for the coverage. It is industry practice for the insurer, not the creditor, to do this. As such, it is not reasonable to impose the delivery requirement, including the attendant liability for failure to comply, on the creditor. We suggest revising this section or the related Commentary to provide that creditors shall be deemed to have satisfied their obligation by contracting with the insurer to provide the policy, certificate of insurance or other evidence of coverage to the consumer within the requisite time frame.

In addition, we note that proposed Section 226.20(e) refers to creditor-placed property insurance in circumstances where the consumer has allowed the required insurance to "lapse." Chase would like to remind the Board that federally-required flood insurance, unlike other forms of creditor-placed hazard insurance, applies to determinations of insufficient coverage, not only to lapse determinations. If the Board chooses to extend the new disclosure requirement to creditor-placed flood coverage insufficiencies, Chase urges the Board to limit this extension to flood insurance, as policies and procedures with respect to other forms of hazard insurance vary greatly within the industry.

With respect to other topics as to which the Board has requested public comment, we believe that a 45 day notice period is an adequate period of time for the customer to obtain insurance even though mailing and receipt may take several days. As the Board knows, 45 days

has been the legally mandated notice period for flood insurance for more than a decade. Chase is not aware of any consumer inability to obtain insurance during this time interval.

Chase strongly supports the proposed Commentary statement that creditors may charge retroactively for insurance coverage during the 45 day notice period, but urges the Board to eliminate the qualification permitting the charge only if it is not prohibited by applicable state or other federal law. A national standard is needed. Once the consumer has had 45 days (or more) to purchase the required insurance and has failed to do so, it benefits the consumer, the creditor and investors if the insurance is effective retroactive to the date of the lapse. This industry practice has functioned well to protect against unnecessary gaps in coverage and uninsured losses. As the Board is aware, a similar issue has been raised with respect to certain proposed flood insurance questions and answers issued by the Board and other banking agencies (as to which comments were due by September 21, 2009). In that context, Chase strongly recommended allowing creditors to purchase flood insurance after the expiration of the notice period and retroactive to the lapse of the policy as a prudent means of protecting the consumer, the creditor, secondary market investors, and the National Flood Insurance Program.

With respect to another one of the Board's questions, Chase does not support adding creditor compensation and escrow account disclosures to the model form. We believe that creditors commonly disclose this information in their customer letters, and believe that this additional content would diminish the clear and simple "call to action" set forth in the proposed model form.

Finally, Chase would like to point out that many creditors outsource property insurance tracking and placement and that the process is technology-laden. Proposed Section 226.20 (e) would have a significant impact on the creditor's systems, their vendor's systems, or both, and affect the interaction between the two. Given this level of complexity, we request the Board to allow for a significant lead time in order to implement these systems changes (not less than one year).

D. Language of Disclosures

The Board has solicited a number of comments regarding the availability of credit-related disclosures in languages other than English. As the Board notes, currently, Section 226.27 allows – but does not require – the provision of TILA disclosures in languages other than English, provided that English versions are also provided. Further, the Board notes that creditors may desire to reach out to the roughly 19% of consumers who speak languages other than English at home.

Clearly, the number of non-English speakers in the United States is significant, and to the extent that creditors seek to provide credit to this group, TILA should provide these consumers with the same level of protection currently provided to those who speak English. However, Chase is not convinced that any change to Regulation Z is warranted on this point. If changes are nonetheless made, Chase recommends that they be very carefully limited to minimize potentially substantial compliance costs, creditor liability, and consumer confusion.

According to the 2000 U.S. Census (cited by the Board in its NPRM), there are a large number of languages currently spoken in the United States. Other than English, they include Spanish, Cantonese, Mandarin, French, German, Tagalog, Vietnamese, Italian, Korean, Russian, Polish, Arabic, Portuguese, Japanese, French Creole, Greek, Hindi, Persian, Urdu, Gujarati, Armenian, Hutterite German, Texas German, Pennsylvania German, Plautdietsch, Ilokano, Pangasinan, Punjabi, Kru, Igbo, Yoruba, Cambodian, Hebrew, Hmong, Navajo, Latvian, Welsh, Yiddish, Dutch, Finnish, Irish, Scottish Gaelic and Hawaiian. This list of 43 languages, while extensive, is not exhaustive.

The problem is further compounded by the fact that mortgage lending is a complex and document-intensive process. Once product, term and state specific variations have been factored in, Chase estimates that, within its own loan origination system, there are approximately 1,200 different documents that may be generated between application and closing. When one multiplies this figure times the 43 languages referenced above, the end result is a massive 51,600 translated documents. The associated costs would be significant.

Liability questions complicate the picture even further. Creditors have legitimate concerns regarding the risk posed by inadequate translations. The documents in question are, by their nature, highly legalistic, employing many terms of art unique to the industry (including, we note, terms of art required by TILA itself, such as "Finance Charge" and "Annual Percentage Rate"). If these terms are not accurately translated, does liability under TILA arise due to failure to use the TILA mandated terminology? If there is a conflict between the English and translated copy, what version controls? Could a court hold that since a translation was knowingly provided to a non-English speaker, the creditor demonstrated that it intended the consumer to reasonably rely on that translation? If so, this could give rise to fraud or contract avoidance claims for any discrepancy.

To address these concerns, it is reasonable to assume that creditors would turn to professional, outside translators. Such translators would likely be expected to warrant the accuracy of their work, and to indemnify their creditor clients for any liability. This, undoubtedly, would drive the costs of compliance up even further, as translators sought to "price in" the risks of such indemnification.

A poorly written rule on translations could have other unintended consequences as well. Creditors may be reluctant to enter markets with high populations of non-English speakers, out of fear that expensive translation requirements would be triggered. Alternatively, creditors may opt only to provide certain products to non-English speaking customers, to keep the translation costs minimal. Either of these approaches could result in reduced availability of credit to certain neighborhoods, or an unintentional (and arguably, unlawful) disparate offering of credit based on national origin. Creditors may also be dissuaded from developing new products entirely, because the costs of translating new documents into many languages would be prohibitive – thus resulting in reduced credit availability for English and non-English speakers alike.

Because of these concerns, Chase feels that the Board should take a measured approach. We believe that the current rule of Section 226.27 is sound, giving creditors an option, but not an obligation, to translate their disclosures.

A non-English speaker is well aware that he or she is in the minority. Like any reasonable consumer, he or she makes calculated risk choices as to when an interpreter may be required.

This simple "rule" that the non-English speaker bears responsibility for knowing when a translation is required addresses all concerns with the most efficiency, and the best possible outcome. The consumer can obtain a translation of any document, in any language, and only in those situations where he or she decides it is necessary. The creditor is spared the substantial expense of translating all documents into all languages, particularly where the translations would get little use (as would be the case for languages spoken by only a small percentage of the public). The creditor is further relieved of any liability for an inaccurate translation, since the consumer is the one choosing the translator, and is no longer relying on the creditor's work. Since the creditor is no longer using an outside translation company, costs are kept to a minimum. Finally, the creditor is free to develop new products without burdensome translation requirements, and to offer those products in all communities, thus eliminating any fair lending concerns.

Chase sincerely hopes, therefore, that the Board opts to keep current Section 226.27 intact, without revision. If, however, the Board does deem it necessary to revise Section 226.27, the Board should be careful to draft such revision in light of the concerns mentioned above:

- The Board should expressly limit the number of languages for which translation is required. Although there are many languages spoken in the United States, only two account for more than one percent of the population: English (80.6%) and Spanish (12.03%). The next five, in order of frequency, are: Chinese (0.57%), Tagalog (0.51%), French (0.49%) and Vietnamese (0.42%).

  As the number of consumers speaking a given language decreases, so too does the cost utility of translating a high volume of documents. Chase would recommend, therefore, that any final rule include only these "Top Five" non-English languages. Note that this approach is consistent with that taken by the state of California under its "translation" law: California Civil Code Section 1632.

- The Board should limit translation to generic educational documents such as "Key Questions" and important templates such as the mortgage and note, expressly excluding other documents. Transaction specific translated documents should not be required. Post-closing documents such as periodic statements should also be specifically excluded. The systems and programming challenges posed by foreign language narrative are significant; the difficulties are far greater when numbers and format requirements are involved.

Assuming such systemic changes can be made, servicer systems would also require the ability to "flag" accounts, so as to identify those requiring translation. This could only be done, if at all, on a going forward basis.

Finally, servicers would need to develop the means to pass these "flags" to one another as loans and servicing rights are transferred on the secondary market. As the Board is aware, credit is currently broadly available thanks, in no small part, to the role of the secondary market, which has increased funds for lending, as well as resulted in the development of new products to serve previously underserved communities. If, however, servicers were required to translate post-consummation notices and documents, no servicer would be able to acquire a pool of loans, lines or servicing without first understanding which accounts require such translations. If a servicer is unable to identify and flag such accounts, it might decide merely to omit any such accounts from sale altogether, thus reducing credit availability.

- The Board should take steps to shield creditors from liability for good faith efforts to comply and assist consumers. As noted above, creditors will be understandably concerned about liability for inaccurate translations. Lack of familiarity with the languages in question, the specific terms of art required for mortgage transactions, and the specific terminology required under TILA make any translation requirement rife with potential liability traps for the unwary. Creditors who are making a good faith effort to help consumers understand their credit transactions should not be punished for such efforts.

  There are a number of ways in which the Board might mitigate this risk. The first, and most obvious, is to simply provide a safe harbor, expressly stating that if a creditor makes a good faith attempt to translate disclosures or other documents, the English version of the document shall control in the event of any conflict, and the creditor has no liability for unintentional inaccuracies. The Board could further rule that any state law to the contrary is inconsistent with TILA, and thus, preempted under current Section 226.28.

  Should the Board decline to take such a broad approach, it could instead focus on obtaining, and publishing, "official" translated copies of required disclosures under Regulation Z. (This would be similar to the approach taken by the Federal National Mortgage Association in providing basic Spanish translations of its standard note and mortgage documents.) The rule could then provide that if the official version were used, the creditor has no liability.

  Finally, regardless of which approach the Board takes, it could promulgate, and adopt a new "warning statement" for creditors to use if they provide (voluntarily or otherwise) translated documents. Such a disclosure would of course be translated as well, cautioning consumers that the translation is being providing only as a courtesy, and that, in the event of a conflict, the English version of the loan documents and disclosures will control. The disclosure could also warn consumers that if they have

any concerns, they should consult with their own translator. As above, here too, the Board could promulgate "official" translations of this warning statement, and provide that creditors are shielded from liability under TILA and other laws if such a warning is given.

- Any disclosure requirement should be limited only to those situations in which it is actually necessary. As noted above, the non-English speaking consumer is in the best position to know when he or she needs a translation. Chase therefore believes it makes sense to require disclosure (and raise all the attendant cost and liability issues) only when the consumer has specifically requested it. The Board may also consider imposing a translation requirement any time the transaction is conducted in a particular language, but Chase cautions that this would increase the number of situations in which translations would be required – perhaps needlessly.

  Chase notes that the Board requested comment on whether a translation requirement should be triggered by the language of a creditor's advertisement. Such a rule, however, would appear too broad and unworkable, since large creditors like Chase frequently use the same advertisements nationwide, particularly on the Internet. Further, in most situations, it is impossible to know which ad triggered a particular consumer's loan request. An "advertising trigger" would therefore potentially, and unnecessarily, implicate every single credit inquiry Chase receives.

  Finally, when the consumer is already acting through an interpreter, the need for a translation seems greatly minimized. Chase therefore strongly supports an exception for any such situation.

E. Prohibited Acts or Practices in Connection with Credit Secured by Real Property or a Consumer's Dwelling

The Board has proposed a number of changes to Section 226.36, intended to limit practices which, in the Board's view, tend to result in consumers unwittingly obtaining credit that is costly, or otherwise inappropriate for their financial situations. Specifically, the Board has proposed:

- Expanding the scope of transactions subject to existing restrictions on the improper influence of appraisers;
- Adding new compensation limits for brokers and creditor employees, to restrict payments based on the terms and conditions of a particular loan;
- Banning all creditor paid compensation to brokers or creditor employees, if the consumer also pays compensation of any type to these individuals;
- Prohibiting "steering" of consumers to loans that are ill-suited for their financial situations; and

- Adding a new definition of "loan originator", who would be subject to some of these new restrictions.

Because the proposed changes to Section 226.36 are numerous, Chase will address each of these proposals in turn.

Transactions Subject to Restrictions on the Improper Influence of Appraisers

Currently, Section 226.36(c) prohibits creditors, mortgage brokers and their affiliates from coercing, influencing, or otherwise encouraging appraisers to misstate or misrepresent the value of the consumer's principal dwelling in connection with a closed-end transaction secured thereby. The Board proposes to expand this existing prohibition to all closed-end transactions secured by real property or a dwelling.

Chase agrees that inaccurate and inflated appraisals can lead to improperly extended credit. Such practices hurt both consumers and creditors. In addition to unduly increasing consumers' debt load, loans based on faulty appraisals create a higher risk of default, thus posing safety and soundness risks to the creditor itself.

Indeed, recognizing these risks, the Office of the Comptroller of the Currency has, for some time, required national banks to adopt appraisal standards, including standards for appraiser independence. (*See* 12 CFR Sections 34.41 through 34.47.) Similarly, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation recently adopted a new "Home Valuation Code of Conduct", requiring strict appraisal independence for all loans they purchase. Because of these concerns, Chase strongly supports the Board's proposal to extend the current provisions to all closed-end transactions, not merely those secured by the consumer's principal dwelling.

Restricting Payments Based on the Loan Terms and Conditions

The Board has proposed to limit compensation based on the specific terms and conditions of a credit transaction. As proposed, this restriction would apply to compensation paid to "loan originators", which would include mortgage brokers, table funding lenders and direct employees of creditors. The prohibition would apply to payments by any party other than the consumer, including purchasers of loans on the secondary market. Chase supports many portions of the Board's Proposal but has concerns with others. In summary:

- Chase believes that incentive compensation is essential and urges the Board to adopt the alternative proposal that would permit compensation based on loan amount and volume (number of units).
- We support the elimination of overages paid to employees of the creditor. We are more concerned with prohibiting compensation adjustments based on underages, as such a ban could have an adverse impact on consumers and creditors alike.

- We do not compensate differently based on loan type (e.g., fixed vs. ARM) or feature (e.g., prepayment penalty, reduced documentation). We generally support the Board's Proposal in this regard, but believe it needs clarification and may have some draw backs.
- We generally support the Board's Proposal to eliminate yield spread premiums, but believe that limited exceptions should be made available.

These points and others are discussed in more detail below.

At the outset, Chase questions some of the apparent assumptions in the Board's Proposal. As we understand it, the Proposal is intended to prevent brokers, creditors and loan investors from providing financial incentives for the origination of risky products (and implicitly, to slow or stop the spread of such products). We have serious doubts, however, about the efficacy of such a scheme. We do not believe that risky products will be eliminated, or even curtailed, by changing compensation structures. Products will always be designed to have maximum consumer appeal. If they have such appeal, they will be sold. If they are unappealing, they will not. Moreover, consumers will always gravitate toward the most appealing product, features and payment, regardless of differentials in compensation.

Additionally, we believe the Proposal, as currently worded, is overly broad. We believe the Board's primary concern to be with the concepts of "yield spread premiums" (premium payments made to mortgage brokers for delivering loans with "above par" interest rates), and "overages" (premium payments made to a creditor's own employees for the same purpose). If this is, in fact, the Board's intent, the wording of the Proposal should be so limited. The prohibition on any payment tied to the "terms and conditions" of a particular product could result in unintended consequences, potentially prohibiting practices that are, in fact, beneficial to consumers, and leading to unintentional liability for any discrepancy in compensation whatsoever.

We urge the Board to recognize that some compensation practices result in *lower* consumer costs. While the Board is primarily concerned with *overages,* loan officer compensation is also often based on *underages,* in which a loan officer's compensation can vary due to the offering of a *lower* than par rate/fee combination to a consumer. This might be done in instances where it is needed to save a transaction, to meet a competitor's price, or as a result of an error made by the loan originator. Understandably, however, to prevent these reductions from becoming rampant, the creditor needs the flexibility to reduce the loan officer's compensation accordingly.

Alternatively, in a competitive market, a creditor might pay a small bonus to any loan officer who matches or beats a written loan offer from a competitor. Such a payment would clearly be based on the "terms and conditions" of the resulting loan, even though the consumer ultimately benefits. If the intention of the Board's proposal is merely to ban payments that incent *above-par* loan pricing, then the regulation should make this explicit, and provide a safe

harbor for any compensation variations that result from any particular loan officer's *lower* than par sales.[1]

The overly broad wording of the Proposal also opens the industry up to liability for other, unintentional violations. For example, the Board's proposed regulations do not limit a creditor's ability to pay different employees at different rates, based on, for example, loan performance. But what if certain products (such as interest only ARMs) simply "perform" better than others? If a particular loan officer predominately originates such "performing products", and as such, is paid more than a loan officer who originates less profitable loans, does the creditor violate the rule by paying more for certain "loan terms"?

As noted above, Chase supports the alternative proposed by the Board that would permit compensation based on loan amount. We believe it is appropriate to incent loan originators – both employees and brokers -- to generate business by compensating them to do so. The Board's concerns about the potential for abusive practices would be better addressed through product parameters and underwriting criteria, a step that responsible creditors as well as Fannie Mae, Freddie Mac and other investors have already taken.

It is true that a higher loan amount results in a higher consumer debt load, and can reduce the consumer's equity in the collateral property. However, recent events in the mortgage market have taught creditors a valuable lesson against lending at high loan-to-value ratios. Coupled with strong rules to promote appraiser independence, creditors have an inherent risk management incentive to keep loan-to-value ratios reasonable. Additionally, unlike rate or other terms, higher loan amounts can help consumers and the overall economy. While higher loan amounts may ultimately result in higher creditor profits, they also result in a consumer benefit, in the form of greater credit availability.

The Board expresses some concern that if the loan-to-value ratio rises sufficiently, consumers may face extra costs in the form of higher rates, additional points and fees, or mortgage insurance premiums. Alternatively, the Board expresses concern that since monthly payments would increase, a consumer might be pushed to products with discounted initial rates that could later rise significantly. However, the Board ignores the fact that under this "loan amount" exception, its proposed ban on compensation based on other loan terms and conditions would stand. And as such, any of these changes (higher rates, higher points and fees, higher mortgage insurance costs) could themselves be violations of the proposed rule. As such, creditors would have an additional disincentive from loan amount increases that would result in other changes in loan terms and conditions.

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[1] In a footnote, the Board also points to a few recent actions by the FTC and the Department of Justice ("DOJ") to show that creditor paid compensation based on loan terms can lead to disparate treatment in violation of fair lending laws. One might argue that the underages or competitive price matching referenced above might lead to these same concerns. However, the Board does not assert that those existing fair lending laws are inadequate to address this problem. Indeed, the fact that the FTC and DOJ have taken action in the first place suggests that there are already protections in place.

In addition to supporting the proposed "loan amount exception", Chase also believes that creditors should remain free to compensate based on actual loan production volume. As noted, the Board's Proposal supports the idea of paying loan officers and brokers on profitability. Due to the economies of scale available, there is a strong correlation between volume and overall profitability. Therefore, we also urge the Board to consider an express exception permitting volume based compensation for employees.

The regulation also seeks to place its restrictions on *all* payers of compensation, not merely creditors or mortgage brokers. The Board specifically states in its Preamble that this rule is intended to cover payments by secondary market purchasers of loans. The Board has stated that this is necessary to avoid circumvention of the rule. However, such an approach is far too broad, and could have disastrous effects on the secondary market. The Board's stated concern is to ensure that mortgage originators do not circumvent the prohibition by acting as a "creditor in name only", then structuring and assigning the obligation to the "real" interested creditor. While we understand the Board's concern, we believe the approach to be overly broad, and we point out that other federal agencies already have existing standards that may be leveraged, without unduly dampening the secondary market for loans.

The Board's proposed approach in this regard would be somewhat unprecedented. For more than thirty years, RESPA has prohibited the payment of referral fees, kickbacks, or any other "things of value" given in exchange for referrals of lending business. The underlying assumption of this prohibition was that such referral fees (a) add to the costs of those paying them (with such increased costs being recouped from the consumer in the ultimate price), and (b) promote "steering" of consumers to the creditor paying the highest referral fees – regardless of whether that creditor is the lowest cost provider.

However, in enforcing RESPA, the Department of Housing and Urban Development ("HUD") has never felt that the purchase price for an *already existing* credit obligation has any real impact on consumer choice or cost. To that end, HUD's Regulation X has excluded "secondary market transactions", defined as a *bona fide* transfer of a loan obligation in the secondary market. In determining what constitutes a *bona fide* transfer, HUD considers the "real source of funding" and the "real interest of the funding lender", stating that "mortgage broker transactions that are table funded are not secondary market transactions". (*See* 24 CFR § 3500.5(b)(7))

Applying a different standard (under either RESPA or the Board's Proposal) could have unintended consequences. As the Board is aware, the availability of credit, as well as a selection of credit products, is due in large part to the extensive secondary market for loans, which provides the liquidity necessary for creditors to engage in such transactions. A secondary market purchaser will, understandably, value some loans and loan pools differently than others. For example, a pool of 30-year fixed rate loans paying a weighted average of 6% is inherently more valuable than a pool of 30-year fixed rate loans paying a weighted average of 5%. Yet the Board's proposal would require a secondary market purchaser to value these pools identically, ignoring the reality of the situation, because the purchaser would be prohibited from factoring

the interest rate difference into the price. The resulting turmoil in the secondary market could be extensive.

If the Board is concerned with circumvention of the rule, it need only turn to HUD's RESPA standard. Rather than broadly capturing every secondary market transaction, HUD instead focuses on the substance of a particular transaction, regulating only those necessary, while leaving the true secondary market to function uninhibited. We would therefore propose that the Board instead adopt the same standard. Not only does this approach work without unduly restricting the flow of capital; it has the added benefit of increasing consistency between Regulation Z and Regulation X.

The Board's Proposal does not distinguish between compensation paid to the employee of a creditor and compensation paid to a mortgage broker. We generally support the Board's proposed restrictions on broker compensation, including yield spread premium, but believe that a limited exception is warranted as discussed below.

Chase has generally eliminated its wholesale lending program except for a unique program that illustrates the need for flexibility, namely, the Section 502 Guaranteed Rural Housing Program (the "Rural Housing Program") offered by the United States Department of Agriculture ("USDA"). The Rural Housing Program provides mortgage financing to low-to-moderate income consumers in rural areas. Products offered are limited to 30 year fixed rate mortgages. The USDA has, by regulation, limited the interest rates that can be charged (7 CFR 1980.320). Points can be charged, but can be financed only in limited circumstances where there is a rate reduction and only for those applicants that meet the USDA-defined income limits for the financing of discount points. Fees are required to be limited to those that are customary for similar loans (7 CFR 1980.324). It is very common for a Rural Housing broker or table funding lender to collect fees from the consumer. It is also common for the consumer to agree to pay a higher rate in exchange for the broker absorbing all or a portion of the closing costs. The creditor pays the broker more for the higher rate loan, thereby providing the funds needed to pay the consumer's closing costs.

Chase believes that the Board's proposed restrictions on yield spread premium could significantly impact the availability of this unique and beneficial program. Low and moderate income consumers with minimal cash on hand would be unable to take advantage of the opportunity to have brokers absorb closing costs, thereby reducing the number of creditworthy consumers who are able to purchase a home.

We further believe that the Board should recognize the role played by the USDA in administering the Rural Housing Program. Each and every loan is submitted to the USDA for review. If the USDA finds that a loan does not comply with its standards, including its interest rate and fee limitations, it will reject the loan and refuse to guaranty it unless unsatisfactory items are corrected. The result is a highly effective means of extending reasonably priced credit to consumers that would otherwise not be served, while providing the protection they need.

Chase's recommendation is that the Board should permit the payment of yield spread premiums in connection with loans in the Rural Housing Program. We believe that review by the USDA, coupled with disclosure of compensation on the GFE, would prevent abuse while preserving flexibility.

Finally, Chase has no objection to the Board's proposal that creditors maintain, for two years, a record of the compensation agreement in effect on the date the transaction's rate was set.

Creditor Paid Compensation Where Consumer Also Pays Compensation

As a corollary to the rules above, if a loan originator receives compensation directly from the consumer, the originator would be prohibited from also taking compensation from a third party in connection with that transaction. The Board is concerned that the consumer's payment of fees directly to the loan originator raises the consumer's expectation that the loan originator is acting in his or her best interest.

Consumer expectations and broker obligations should be managed by other means. State and federal laws with respect to licensing, registration and other forms of regulation of mortgage brokers have greatly increased the scrutiny to which brokers are subject. Some states have enacted legislation providing that brokers have fiduciary obligations to consumers. Many states have mandatory forms of agreement outlining the mutual obligations of brokers and consumers. A number of national trade associations and individual creditors have taken similar steps. Moreover, HUD's new form of GFE discloses the total amount of compensation paid to the broker by the consumer and the creditor. We believe that the Board's attempt to manage a relationship through management of compensation will not be effective to achieve the desired end and will adversely impact programs beneficial to the consumer.

The Board has noted that its source of compensation restriction would apply only to "direct compensation retained by the loan originator". As a technical comment, to the extent that the Board ultimately retains this rule, we recommend clarifying that "direct compensation" does not include amounts paid to the loan originator to reimburse it for actual out-of-pocket expenses. Loan originators will frequently advance the cost of appraisals, title searches and other services from their own operating accounts, then seek reimbursement from the consumer. Once reimbursed, the reimbursed amount is "retained" by the loan originator, but clearly, does not represent profit. We do not believe the Board intended to include these payments as part of its prohibition, but for clarity's sake, we recommend specifically stating this in any final rule.

"Steering" of Consumers

The Board has also presented an Optional Proposal that would prohibit the "steering" of consumers into loans that result in greater compensation to the loan originator unless the loan is in the interest of the consumer. Chase, of course, expects that *all* its loan officers, mortgage brokers and correspondents act professionally, with the best interest of consumers in mind. We expect them to analyze the consumer's situation, consult with them about their needs and concerns, and assist them in selecting a product that best suits those needs. But because every

consumer's situation differs, no two consumers can ever be compared on an "apples-to-apples" basis. As such, we think that an anti-steering rule, while well-intended, would be difficult to enforce, leading to unintended liability for creditors and ultimately driving up litigation costs (which could result in higher loan pricing).

The Board has stated the rule would be deemed satisfied if:

- The consumer is presented with at least three loan options for each type of transaction in which the consumer expressed an interest;
- The options include (a) the loan with the lowest rate, (b) the loan with the second lowest rate, and (c) the loan with the lowest total dollar amount for origination points and fees;
- The loan originator has a good faith belief that the consumer could qualify for all three options; and
- In the case of mortgage brokers, the loan options are obtained from a significant number of creditors with which the originator does business.

Chase believes the Board's Proposal is flawed and is vulnerable to abuse. First, the Board should clarify that the anti-steering proposal applies only to broker transactions, not to the case of an employee originating a loan with his or her employer. Second, the Proposal would not have the effect of assuring that the consumer receives the least costly loan, especially if the originating broker only does business with high priced creditors. The Proposal also has the potential for fixing prices. It would implicitly prohibit a mortgage broker from delivering a loan to one of two creditors that paid the better price even if both creditors made the same terms available to the consumer. Some creditors have a greater appetite for loans than others, perhaps for portfolio or balance sheet management purposes, or a need to fill secondary market commitments. If one creditor is motivated to pay more for an identical product than another creditor, it should be permitted to act accordingly and the broker should be able to reap the benefit.

Chase believes that restricting compensation as discussed above is a better means of protecting consumers than requiring the broker to prove that it did not steer the consumer to a more costly or unsuitable product.

Definition of "Loan Originator"

Because the Board has proposed to make its new compensation restrictions applicable to both mortgage brokers and employees of creditors, the Board also proposes to add a new definition of "loan originator", which would encompass both of these parties. The new compensation restrictions would apply to persons who fall within this new definition of "loan originator".

The new definition raises some issues. Perhaps most importantly, the recent Safe And Fair Enforcement for Mortgage Licensing Act ("SAFE Act"), passed by Congress as part of the Housing and Economic Recovery Act, already adds a federal definition of "loan originator". Under the SAFE Act, a "loan originator" is defined as follows

(A) IN GENERAL.—The term "loan originator"—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and

(iv) does not include a person or entity solely involved in extension of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

(B) OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.—For purposes of this subsection, an individual "assists a consumer in obtaining or applying to obtain a residential mortgage loan" by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) ADMINISTRATIVE OR CLERICAL TASKS.—The term "administrative or clerical tasks" means the receipt, collection and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including—

(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii)negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv)engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv). (Housing and Economic Recovery Act, § 1503(3))

The Act goes on to define "Residential Mortgage Loan" by reference to TILA itself, stating that it is "any loan primarily for personal, family, or household use that is secured by a

mortgage, deed of trust, or other consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or considered real estate upon which is to be constructed or intended to be constructed a dwelling (as so defined)." (Housing and Economic Recovery Act, § 1503(8))

Chase strongly urges the Board to use the SAFE Act definition of "loan originator" instead of the one in its Proposal. Adopting two different definitions for the same term will inevitably lead to confusion about who is, or is not, a "loan originator" for which purpose. For example, could an individual be a loan originator for SAFE Act purposes, but not for TILA purposes (or *vice versa*)? In the interest of simplifying compliance, it is better to avoid inconsistent standards, and instead maintain harmony across the spectrum of federal law.

This seems especially true when considering that the SAFE Act definition already appears to cover all persons about whom the Board expresses concern. We see, as the only possible gap, that the SAFE Act definition applies only to "an individual", arguably excluding a legal entity (such a corporation) who acts as mortgage broker. Read literally, adopting the SAFE Act definition of "loan originator" could prohibit certain payments to individuals, but not to companies. This gap seems fairly easily addressed through the continued use of terms already defined by TILA and Regulation Z: "creditor" and "mortgage broker".

Chase therefore recommends that, for consistency purposes, the definition merely incorporate the SAFE Act definition by reference (*e.g.*, "'Loan Originator' has the meaning set forth in Section 1503(3) of the Housing and Economic Recovery Act of 2008."). If the Board wishes to apply the compensation prohibitions to both individuals and legal entities, the other new rules could then be written to limit compensation to "loan originators, creditors and mortgage brokers". Such an approach would appear to accomplish the Board's goals, without bringing undue confusion to the term "loan originator".

F. Implementation and Effective Date

Some provisions of the Board's Proposal will be easier for creditors to comply with promptly and others will take more time. Chase recommends a staggered implementation period corresponding to the time necessary for creditors to make systems changes and to train personnel. Chase suggests the following implementation periods:

- Six months – Key Questions to Ask About Your Mortgage; Fixed vs. Adjustable Rate Mortgages; Elimination of the CHARM booklet; ARM program disclosures; optional insurance disclosures; appraisal coercion rules
- Eighteen months – Loan originator compensation provisions; Changes to calculation of finance charge; Creditor placed insurance; Rate and payment adjustment notices; Option ARM notices

Chase believes that the Board should delay the implementation of its proposed new initial and final TIL disclosures until it has the opportunity to work with HUD to create uniform

disclosures that will present information to consumers clearly and consistently and without duplication.

IV. CONCLUSION

Chase appreciates the opportunity to provide comments on the sweeping changes proposed by the Board and the critical issues they raise. We urge the Board to honor its stated intention of striking a balance between the need for clear and understandable disclosures that consumers will read and act on, and the burden on creditors of implementing those disclosures. We have pointed out instances in which we think the proposed disclosures can be improved. We urge the Board to consider these suggestions in order to achieve a balanced solution that is beneficial to all concerned.

Most importantly, we urge the Board to work with HUD to create uniform, consistent disclosures before requiring any further changes to be implemented. We believe this is the only manner in which the Board's goal of creating clear and meaningful disclosures can be achieved.

If you have any questions, please contact Denise DesRosiers at 813-881-2908.

Sincerely yours,

David B. Lowman

cc: Denise DesRosiers